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No. 76-1407

In the Supreme Court of the United States

OCTOBER TERM, 1976

MERCANTILE TRUST COMPANY NATIONAL ASSOCIATION,
PETITIONER

v.

ST. LOUIS COUNTY NATIONAL BANK, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE COMPTROLLER OF THE CURRENCY

WADE H. MCCREE, JR.,
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1. Petitioner is a national banking association whose principal office is located in St. Louis, Missouri.[1] It is engaged in the banking business and operates a trust department. In February 1970, petitioner opened a trust information office in Clayton, Missouri, a suburb of St. Louis. Prior to opening the Clayton office, petitioner had received notice from the Comptroller of the Currency of the United States that the Comptroller had no objection to the establishment of the trust office "as long as you do not accept deposits, make loans, or pay checks at the location,

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[1]The facts of this case, which are not in dispute, are contained in a stipulation set forth in Pet. App. A-32 to A-47.

thereby bringing it within the definition of a branch office as set forth in 12 U.S.C. 36(f)" (Pet. 7). No banking services are performed at petitioner's trust office in Clayton; no deposits are received, no money is lent, and no checks are paid.

Respondent St. Louis County National Bank commenced this action for declaratory and injunctive relief claiming that petitioner's Clayton trust office was illegal under 12 U.S.C. 36(c) and 92a.[2] The former provision contains restrictions upon the locations where a national bank may establish facilities that are "branches" within the meaning of 12 U.S.C. 36(f), and the latter provision authorizes the Comptroller of the Currency to grant a national bank the right to act in fiduciary capacities. The Comptroller was joined as a defendant in the case.[3]

The district court held that petitioner's trust office was a branch within the meaning of 12 U.S.C. 36(f), and that since under a state court decision a state-chartered bank in Missouri would be unable to operate the same type of facility (see Pet. App. A-16), petitioner's trust office was illegal under 12 U.S.C. 36(c) (Pet. App. A-12). The district court also held that the operation of the trust office violated 12 U.S.C. 92a (Pet. App. A-12 to A-13). The court enjoined petitioner from further operating its trust office (Pet. App. A-13).

The court of appeals affirmed (Pet. App. A-14 to A-25). It ruled that "the three routine banking functions delineated in section 36(f) are not the only indicia of branch

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[2]The language of these provisions, as well as the statutory definition of "branch" contained in 12 U.S.C. 36(f), are set forth at Pet. 3-4.

[3]The Clayton Trust Company and the Director of the Division of Finance for the State of Missouri were permitted to intervene as plaintiffs.

banking" and that "each case must be considered on its own facts to determine if a branch exists" (Pet. App. A-20). An evenly divided court of appeals denied the Comptroller's petition for rehearing and suggestion for rehearing *en banc* (Pet. App. A-27).[4]

2. It is the Comptroller's position that the decision of the court of appeals is incorrect, generally for the reasons stated in the petition and the dissenting opinion of Judge Henley. The Comptroller has long maintained the view that a facility of a bank that does not receive deposits, cash checks, or lend money is not a "branch" within the meaning of federal law and thus is not subject to the limitations in 12 U.S.C. 36(c). Moreover, 12 U.S.C. 92a, which limits the Comptroller's authority to grant national banks the right to act in fiduciary capacities, is intended as a limitation upon a bank's right to act in those capacities at all, and not as a limitation upon the locations where the right can be exercised.

However, the court of appeals' decision in this case appears to be one of first impression in the appellate courts, and although it is potentially an important decision, its likely practical impact, since the case turns "on its own facts" (Pet. App. A-20), is not clear. The Comptroller therefore believes that it would be appropriate to await further consideration of the issues in the lower courts before deciding to seek review in this Court. If the instant petition is granted, the Comptroller intends to

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[4]The court of appeals also denied petitioner's petition for rehearing *en banc* (Pet. App. A-26).

defend his determination that petitioner's trust office is legal.

Respectfully submitted.

WADE H. MCCREE, JR.,
Solicitor General.

JUNE 1977.